

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 251 of 1989

to

FIRST APPEAL No 290 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

HARIJAN RAMA BHIMA

Appearance:

MR.L.R.PUJARI, A.G.P. for Petitioner
MR RC KAKKAD for Respondents

CORAM : MR.JUSTICE M.H.KADRI
Date of decision: 09/05/97

ORAL JUDGEMENT

1. The appellant has filed this group of First Appeals, under Section 54 of the Land Acquisition Act (to be referred to as " the Act " for short) read with Section 96 of the Code of Civil Procedure, challenging the two judgments and awards dated April 30, 1988, passed by the learned Assistant Judge, Porbandar, in Land Reference Cases Nos. 1/86, 3/86 to 10/86 and the other in Land Reference Cases Nos. 2/86 and 11/86 to 40/86.

2. The agricultural land of the respondents-claimants situated at village Motagedh, Tal. Kutiyana came to be acquired for the public purpose of Dam under the Amipur Irrigation Scheme. Because of the construction of the Dam, the agricultural lands of the respondents were likely to be submerged under the water, and, therefore, by notification under Section 4 (1) of the Act dated 23-2-78 the lands were proposed to be acquired for the said scheme. After following necessary procedure under the Act, the Land Acquisition Officer issued notice to the respondents under Section 9 of the Act. The Land Acquisition Officer after hearing the parties and after considering the documentary evidence and considering the sale instances declared his award in Land Acquisition Cases Nos. 12/78 and 13/78 on 6-2-79 and determined the market price of the acquired land at Rs.20 per Are. The Land Acquisition Officer deducted share of Government in compensation as the lands under acquisition were new tenure lands.

3. The respondents being aggrieved and dissatisfied with the award of the Land Acquisition Officer filed applications under Section 18 of the Act before the Land Acquisition Officer to refer the applications to the District Court for additional compensation. The above applications came to be registered in the District Court, Rajkot being Land Reference Cases Nos. 1/86 to 40/86. The above Land Reference Cases came to be transferred in the Court of Assistant Judge at Porbandar. Before the Reference Court the claimants examined witnesses and acquiring body also examined certain witnesses. The claimants also produced various sale instances. After considering the oral as well as documentary evidence led by both the parties, the learned Assistant Judge, Porbandar, by judgment and award dated April 30, 1988 was pleased to determine the market price of the acquired lands at the rate of Rs.125/= per Are and awarded solatium at the rate of 30% and 12 % increase as per Section 23 (1-A) of the Act to the claimants.

4. The appellants have challenged the above referred

to common judgments and awards rendered in Land Reference Cases Nos. 1/86 to 40/86 in this Court by way of filing these First Appeals. As common question of facts and law arise in these group of First Appeals, they are disposed of by this common judgment.

5. Learned A.G.P. Mr. Pujari has vehemently argued that the market price determined by the learned Assistant Judge, Porbandar is on excessive side and the learned Assistant Judge, Porbandar has not considered the sale instances relied on by the Land Acquisition Officer. The argument of learned A.G.P. Mr. Pujari is devoid of any merit. In this connection evidence of claimants' witness Rama Bhima Exh.26 requires to be considered. He has deposed that when the lands were acquired, the rates of the lands in question were Rs.3,000/= to Rs.4,000/= per bigha ; that the lands of village Motagedh were surrounded by lands of village Miti, Bhadula and village Kadegi. He also deposed that the lands of village Motagedh were superior in quality if compared to lands of village Kadegi and village Miti. That the acquired lands were surrounded by 3 rivers namely Ojat, Tali and Sabri. He also deposed that the waters of river Bhadar also touches the lands of village Motagedh. He deposed that they used to take crops of ground nut, millet etc. During the recording of his evidence, the witness Rama Bhima produced the certified copy of the sale deed Exh.29 of survey No.469 of village Miti. The lands of survey No.469 of village Miti were sold on 3-2-77 at the rate of Rs.2,000/= per Acre. Sale deed Exh.29 was with respect to survey No.469 and the consideration of Rs.10,000/= was paid for 2 Acres of land of village Miti. The rate per Acre of sale deed Exh.29 works out at Rs.125 per Acre. Similarly Rama Bhima has also produced sale deed Exh.28 which is of village Kadegi. Survey No.160 of village Kadegi admeasuring 6 Acres and 39 gunthas were sold for the consideration of Rs.32,000/=. Sale deed Exh. 28 was executed on 14-3-72. The rate of the above land of village Kadegi works out at Rs.144.69 per Acre. Thus, through the evidence of Rama Bhima it is proved that in the month of February 1977 the market price of lands of village Miti which is adjacent to the acquired lands was of Rs.125/= per Acre. It is also proved through the evidence of this witness that the lands of village Kadegi was sold on 14-3-72 at the rate of Rs.144.69 per Acre.

6. On behalf of the Acquiring Body, reliance was placed on sale deeds Exh.38, 40 and 42 of village Amipur. The above sale deeds were in respect of lands of village Amipur and they were of year 1975 and 1972. The learned

Assistant Judge has given cogent and convincing reasons for discarding the above sale deeds and had come to the conclusion that they were not comparable sale instances and the lands of both sale deeds were inferior in quality if compared to the acquired land. It is also pertinent to note that the witness Ranmal Vashram examined by the opponents at Exh.37 who deposed about sale deed Exh.38, in his cross-examination has stated that the lands of village Motagedh were superior in quality and the crops of gram, millet and ground nut were raised in the acquired lands. He also admitted in his cross examination that the prices of lands of village Motagedh was Rs.3,000/= per bigha in the year 1977. He also admitted that agricultural lands of village Motagedh were superior in quality. Another witness Naran Arjan Exh.39 examined by the opponents who produced sale deed Exh.40 also admitted in his cross-examination that lands of village Motagedh were superior in quality and fertility then the lands of village Amipur. Another witness Rana Hathia examined by the opponents at Exh.41 and who produced sale deed Exh.42 during his deposition also admitted in his cross-examination that lands of village Motagedh are more fertile because it was surrounded by 3 rivers' water and the black valey was brought by 3 rivers' water. He also admitted that in the year 1977-78 the price of lands of village Motagedh was Rs.3,000/= per bigha.

7. From the evidence as discussed above, it becomes clear that the lands of village Motagedh were superior in quality and fertility. The sale deeds relied on by the opponents were not at all comparable with the acquired lands. Sale deeds Exh.28 and 29 were in near proximity of time to the issuance of notification under Section 4 (1) issued under the Act, and, therefore, the learned Assistant Judge was justified in relying sale deeds at Exh.28 and 29 in determining the market price of the acquired lands at Rs.125/= per Are. I do not find that the market price determined by the learned Assistant Judge is excessive. It must be stated that the lands of the respondents were submerged under the waters of the Dam which was constructed under the Amipur Irrigation Scheme. The respondents had lost their only livelihood because they were solely dependant on the agricultural income which they were getting from the acquired lands. Therefore, the respondents were paid just compensation by the learned Assistant Judge. It is also clear from the evidence of the witnesses that the respondents used to take 3 or 4 crops during the year from the acquired lands. The acquired lands were surrounded by 3 rivers' water, and, therefore, the respondents were getting water

facilities from 3 rivers. I, therefore, do not find any illegality in the determination of the market price of the acquired lands at the rate of Rs.125/= per Are.

8. Learned A.G.P. Mr. Pujari has argued that the Reference Court has erred in awarding additional amount of 12 % to the claimants under Section 23 (1-A) of the Act. It is submitted that in the present case the notification was issued on 23-2-78 and the award of the Special Land Acquisition Officer was declared on 6-2-79, and, therefore, the claimants-respondents were not entitled to claim 12 % additional amount under Section 23 (1-A) of the Act. There is substance in the argument of learned A.G.P. Mr. Pujari. Section 23 (1-A) was inserted in the Act by the amendment of 1984. Bill of the amending Act was introduced in the Parliament in the year 1982. Even by virtue of the transitory provision also the respondents shall not be entitled to get the benefit of Section 23 (1-A), and, therefore, the learned Assistant Judge was not justified in awarding 12 % additional amount under the above Section. Therefore, the award of the learned Assistant Judge with respect to the awarding of 12 % additional amount under Section 23 (1-A) of the Act requires to be modified.

9. The Reference Court has ordered to deduct 5% of the government share from the amount of compensation because some of the acquired lands were of new tenure lands. Direction of the Reference Court to deduct 5% of government share with respect to the acquired lands which were new tenure lands is erroneous, in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996, Supreme Court, 904. Question arose before the Supreme Court as to whether the government can deduct any amount from the compensation which was payable to the owner whose lands were compulsorily acquired under the Act. The Supreme Court, after considering the scheme of Section 43 of the Bombay Tenancy & Agricultural Lands Act and Section 23 (1) of the Act, held that, when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under Section 13 does not arise and the State is not entitled to deduct any amount from the compensation which was awardable to the claimants-owners. In view of the settled legal principles propounded by the Apex Court, the reference court was not justified in deducting the amount of 5% being the share of the Government with respect to the acquired lands which were new tenure lands. The learned A.G.P. has argued that as the respondents have not preferred appeal against the award of the learned

Assistant Judge so far it relates to the deduction of 5% towards government share, the award cannot be modified to that extent. The argument of learned A.G.P. Mr. Pujari has no merit. As per Rule 33 of Order XXXXI of C.P.C., the Appellate Court has power to make such further or other order as the case may require notwithstanding that the respondent has not filed appeal or objections. Therefore, under the provisions of Order XXXXI Rule 33, this Court can modify the order even though the respondents have not filed appeal or cross-objections. Therefore, in my opinion, the deduction of 5 % being government share is required to be modified in the award of the lower court.

10. As a result of the foregoing discussions, all these appeals being numbers 251 of 1989 to 290 of 1989 are partly allowed. The award of the learned Assistant Judge in Land Reference Cases Nos. 1 of 1986 to 40 of 1986 is modified to the extent that the claimants shall not be entitled to claim 12 % as additional amount under Section 23 (1-A) of the Act. However, it is further clarified that the deduction of 5% from the amount of compensation deducted towards government share also requires to be set aside and the award be modified accordingly. The claimants shall be entitled to solatium at the rate of 30% per annum as per Section 23 (2) of the Act. The claimants shall also be entitled to interest at the rate of 9% per annum from the date on which possession of the land was taken over to the date of payment of the excess amount of compensation in the court. If the excess amount of compensation is not paid within 1 year from the date of taking over possession of the lands, interest at the rate of 15% shall be payable from the date of the expiry of the said one year. With the above modification in the award of the lower court, the appeals are partly allowed. However, in the facts and circumstances of the case, the parties are directed to bear their own cost of these appeals.

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